

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Laramie, Wyoming, Cheyenne, Wyoming )  
and Ault, Colorado) )

MM Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

TO: Secretary, Federal Communications Commission  
ATTN: Allocations Branch

**PETITION FOR RULEMAKING**

Laramie Mountain, L.L.C. ("LMB"), licensee of broadcast station KRQU(FM), Laramie, Wyoming, pursuant to Rules 1.401 and 1.420(i) requests that the Commission institute a rule making proceeding to amend Section 73.202(b) of its Rules, the FM Table of Allotments, to specify a new city of license for KRQU on a new higher class channel. LMB requests that KRQU's Channel 283C2 in Laramie, Wyoming be reallocated to Ault, Colorado on Channel 280C1 at allotment point 40° 45' 00" N, 105° 09' 12" W<sup>1</sup>. In order to accommodate this request, LMB seeks the substitution of Channel 277C2 for Channel 280C2 in Cheyenne, Wyoming and the re-allotment of Channel

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<sup>1</sup> Rule 1.420(i) permits the modification of a station's license to specify a new community of license without allowing competing expressions of interest. *Springfield, TN and Oak Grove, Kentucky*, DA 03-3871 (Dec. 8, 2003). Furthermore, the channel substitution of Channel 281C1 for 283C2 is the type of higher class adjacent channel upgrade contemplated under Rule 1.420(g)(iii) without allowing for competing expressions of interest. The substitution of Channel 280C1 for Channel 283C2 in Laramie, Wyoming would not be possible but for LMB's willingness to have Channel 283C2 reallocated other than as currently authorized. The proposal, therefore, is at the very least a "incompatible channel swap" in that KRQU's operation on Channel 283C2 in Laramie, Wyoming is mutually exclusive and there is no alternate channel of its class that is fully spaced from KRQU's site and there is no other channel available for Ault, Colorado. *See, Jacksonville and Sallersville, KY*, 17 FCC Rcd 4662 (2002) at ¶8 and n 2, *Canton and Morristown, NY*, 15 FCC Rcd 13319 at ¶2 and n 2 (2000).

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283C2 to Laramie, Wyoming, with a site restriction that allows for the use of Channel 280C1 at Ault, Colorado

LMB has attached an Engineering Statement (the "Engineering Statement") demonstrating that this petition is in full accord with Commission minimum distance separation and city grade coverage requirements. *See Exhibit 1*. Grant of the requested channel reallocation would result in a preferential arrangement of allotments as provided in the Commission's change of community procedures by promoting a *first* local transmission service to Ault, Colorado and by increasing the population served by nearly eighteen times from 33,619 within KRQU's current 1 mV contour to over 604,178, a gain of 570,559 persons.<sup>2</sup> *See, Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd. 4870 (1989), *reconsideration granted in part, denied in part*, 5 FCC Rcd. 7094 (1990).

Ault, Colorado is a community for allocation purposes. It is incorporated and is a census designated place with a 2000 Census population of 1,432. According to the 2000 U.S. Census, Ault, Colorado is not part of an Urbanized Area. Ault, Colorado has its own post office and zip code, churches, businesses, restaurants, schools, police department, volunteer fire department, and government. *See Exhibit 2*. Accordingly, it is clear that Ault, Colorado is an independent community deserving of its first local transmission service. *See, Estelline, TX*, 18 FCC Rcd. 11761 ("Although the population of Estelline is small [168], it nevertheless qualifies as a community since it is listed in the U.S. Census and it is incorporated."), *See also, Crisfield, Maryland, Bell Haven, Cape Charles, Exmore, Virginia*, DA 01-2980 (September 29, 2003).

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<sup>2</sup> The proposed 1mV contour of 280C1 in Ault, Colorado would continue to encompass a significant area currently served by KRQU on Channel 283C2 in Laramie, Wyoming. The population loss is, thus, significantly less than 33,619. *See Engineering Exhibit 1, Figure 4*

**A. The Proposed Amendments to the FM Table of Allotments Benefits the Public**

The Commission must determine whether LMB's "proposed amendments to the FM Table Allotments is in the public interest and is in accord with [the Commission's] statutory mandate to 'make such distributions of licenses and frequencies . . . among the several States and communities as to provide a fair, efficient, and equitable distribution of radio services to each of the same.'" *Parker & Port St Joe, FL*, 11 FCC Rcd 1095 (1995); *quoting* 47 USC §307(b). In making this determination, the Commission must "compare the proposed allotment plan to the existing state of the allotments for the communities involved. If the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments) [the Commission] will adopt the proposal." *Memorandum Opinion & Order on Rules Requiring new Community of License*, 4 FCC Rcd at 4873. In assessing the proposed allotment plan, "[t]he Commission seeks to provide in order of priority: (1) first full-time aural reception service, (2) second full-time aural reception service; (3) first local transmission service; and (4) other public interest factors. Co-equal weight is given to priorities (2) and (3)." *Id* at 4873 & n 8; *Faye & Richard Tuck, Inc* , 3 FCC Rcd 5374, 5376 (1988).

**1. Priority (3): First Transmission Service.** The proposal should be adopted because it will provide Ault, Colorado with its first local transmission service. In carrying out its Section 307(b) duties, the Commission should "presume that every separate community needs at least one local transmission service." *Parker*, at 1095. As stated above, Ault, Colorado is not part of an Urbanized Area as designated by the Census Bureau. *See* Urbanized Areas: 2000 U.S. Census. As stated above, it is an incorporated town with its own elected local government; police department; volunteer fire department; schools, businesses, etc.

**2. Priority (4): Other Public Interest Factors.** Operation of Channel 280C1 as an Ault, Colorado station will result in a 1.0 mV/m signal coverage of approximately 16,656 square kilometers containing 604,178 people. This compares to the current coverage of KRQU of

approximately 7,831 square kilometers and 33,619 people, a net gain in service to 570,559 people and an additional 8,825 square kilometers. The loss area is served by over five signals. See Engineering Statement.

The proposed change for KRQU(FM) will not cause Laramie, Wyoming to lose its only local transmission service. There are currently five commercial FM stations and two full-time AM stations licensed to Laramie. Therefore, even if there were a projected loss of a channel, which there is not, Laramie, Wyoming is served by five or more stations which is considered well served. See *LaGrange and Rollingwood, Texas*, 10 FCC red 3337 (1995). Accordingly, the community of Laramie will not be deprived of its only local transmission service and will remain well served. Furthermore, the proposed reallocation of Channel 283C2 to Laramie, Wyoming, with a site restriction, will maintain Laramie's fifth FM Channel allotment, thereby affording Laramie, Wyoming no loss.

In order to accommodate the allocation of 280C to Ault it is also necessary to substitute the vacant and not yet applied for Channel 280C2 at Cheyenne, Wyoming with Channel 277C2 at Cheyenne, Wyoming. See Engineering Statement, Figure 2. The substitution would require a site restriction for Channel 277C2, which is within the normal 32 kilometers required to allot a class C2 channel to a community and provide the required 70 dbu city grade coverage to Cheyenne, Wyoming. The result is that there would be no loss in service to Cheyenne. The Commission will routinely substitute vacant and unapplied for channels with different allocation points that are site restricted in order to accommodate rulemakings that will serve the public interest. See, *Booneville, California*, 17 FCC Rcd. 19202 (2002) (substituted Channel 300A for Channel 241A to allow an increase in effective radiated power for a Class A station); *Hawesville, Kentucky and Tell City, Indiana*, 11 FCC Rcd. 5291 at ¶4 and n 2 (1996).

**B. The Proposed Allocation of Channel 280C1 to Ault, Colorado and the Channel Substitution in Cheyenne is Fully Spaced.**

The proposed changes are not short spaced and are in conformance with 47 C.F.R. §73.207:

**1) *Short Spacing with KARS-FM.*** The proposed channel substitution of Channel 277C2 in Cheyenne, Wyoming will not be short spaced to KARS-FM, Laramie, Wyoming. KARS-FM has received a construction permit to change its transmitting site and downgrade to a class C1. KARS-FM's CP site is fully spaced to Channel 277C2 at Cheyenne, Wyoming. Furthermore, KARS-FM is currently silent, has cancelled its present tower lease, and has started the construction of the new class C1 operation, which is expected to be completed in late Spring 2004.<sup>3</sup> Where there is a change in channel, it is not necessary to await the construction of an outstanding construction permit. As noted in *Ardmore, Brilliant, Brookwood, Alabama*, 17 FCC Rcd. 16332 at ¶12 (2002), "The Commission stated that grant of the application [changing channels] amends the FM Table of Allotments and, unlike routine minor change applications under Section 73.208 of the Rules, the formerly licensed facilities are no longer protected."

**2) *KOZY-FM, Gering, Nebraska.*** The proposed allocation of 280C1 to Ault, Colorado will be fully spaced to KOZY-FM, Gering, Nebraska, Channel 280C3. KOZY has been ordered to change Channels to 293C3 in MM Docket No. 97-106, RM-9044 and RM-9741.<sup>4</sup> Upon the Channel change by KOZY-FM as required by the Commission, no short-spacing is indicated. See Engineering Report.

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<sup>3</sup> KARS-FM agreed to downgrade to a Class C1 in another rulemaking proceeding to allow the reallocation of KTRR(FM), Loveland, Colorado, which allowed, in turn, for a new station KAGN(FM) in Greenwood Village, Colorado. KARS-FM was also not operating with the minimum Class C power, required to maintain full Class C status 2003 FCC Lexus 5017 (September 16, 2003). In the event KARS-FM was not already downgraded voluntarily, LMB would ask the Commission to issue a show cause order to downgrade KARS-FM to a Class C0.

<sup>4</sup> MM Docket No. 97-106 provided for the new allotment of Channel 280C2 to Cheyenne, Wyoming. The Petitioner was TSBII, Inc. LMB is willing to reimburse, if necessary, Tracy Broadcasting Corporation, the Licensee of KOZY-FM, for the legitimate and prudent expenses for its frequency change to accommodate the allotment of Channel 280C1 to Ault, Colorado, if the Commission determines if LMB or the TSBII, Inc. are responsible for such reimbursements.

**3) KRQU-FM Short Spacing.** There will be no short spacing to 283C2 in Laramie, KRQU's current station, since 280C1 will be substituted for KRQU's 283C2 in Ault, Colorado and 283C2 will remain in Laramie at a site cleared to the Ault allocation

**4) The Proposal to Upgrade 280C2 to Channel 280C1 in Cheyenne, Wyoming.**

This petition was filed by Mountain States Radio, Inc. ("MSR"), licensee of KRRR(FM), Cheyenne, Wyoming. MSR is under common ownership with LMB. MSR is filing concurrently with this Rulemaking a Petition to Dismiss its pending Petition for Reconsideration of its 280C1 rulemaking.

\* \* \* \* \*

In sum, the allotment proposed will result in a first local service to Ault, Colorado, and provide a net gain of service to more than 570,559 people. These public interest benefits are more than sufficient to support the reallocation of the channels. Laramie is already well served with 7 stations and Laramie would not lose its fifth FM Channel since 283C2 can be allocated to Laramie with an appropriate site restriction. A search of the entire commercial FM spectrum concluded that no other FM Channels, other than Channel 280C1 is available for use at Ault, Colorado. A denial of this Petition would act to deny the first local service to Ault, Colorado. Accordingly, LMB respectfully submits that the allotment proposed herein would serve the public interest and should be implemented. LMB hereby expresses its intention to file an application to operate on Channel 280C1 at Ault, Colorado and, if granted, to build the facility expeditiously. LMB will also participate in an auction and file an application for Channel 283C2 at Laramie as reallocated and, if its application is granted, will build the station promptly <sup>5</sup>

WHEREFORE, for the reasons stated above, a rule making proceeding should be instituted to amend Section 73.202(b) to substitute Channel 277C2 for Channel 280C2 in Cheyenne, Wyoming

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<sup>5</sup> LMB will also file an application and participate in an auction for 277C2 in Cheyenne, Wyoming and if its application is granted will promptly construct the station

and assign Channel 280C1 to Ault, Colorado, re-allot Channel 283C2 to Laramie, Wyoming, with a site restriction that allows for the use of Channel 280C1 at Ault, Colorado

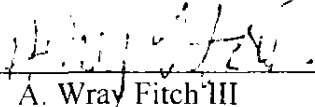
The following is a summary of the proposed changes to the FM table of allotments, 73 202(b)(1)

COMMUNITY	PRESENT	PROPOSED
Cheyenne, WY	229A, 250C1, 260C2, 264C1, 280C2, 285C2, 292A	229A, 250C1, 260C2, 264C1, 277C2, <sup>6</sup> 285C2, 292A
Laramie, WY	236C, 244C2, 254A, 275C, 283C2	236C, 244C2, 254A, 275C1, 283C2 <sup>7</sup>
Ault, CO	-----	280C1 <sup>8</sup>

Respectfully submitted,

**LARAMIE MOUNTAIN BROADCASTING, LLC.**

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By:   
A. Wray Fitch III  
Timothy R. Obitts

February 11, 2004

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<sup>6</sup> Allotment point 41° 22' 59"N, 104° 40' 06" W, site restriction 30.4 km northeast of Cheyenne, Wyoming

<sup>7</sup> Proposed allotment point 41° 23' 00" N, 105° 41' 48"W -- site restriction 12 km northwest of Laramie, Wyoming

<sup>8</sup> Allotment point 40° 45' 00" N, 105° 09' 12" W, site restriction 40.3 km northwest of Ault, Colorado

**EXHIBIT 1**

**ENGINEERING**

**TECHNICAL STATEMENT  
KRQU LARAMIE, WYOMING  
LARAMIE MOUNTAIN BROADCASTING, LLC**

The following Technical Statement is prepared in support of a Petition for Rulemaking filed by Laramie Mountain Broadcasting, LLC ("LMB") licensee of KRQU(FM) Laramie, Wyoming. LMB seeks to modify the licensed operation of KRQU(FM) to specify a new city of license, class of channel, transmitter location and channel. This statement will show that the proposed changes as outlined in this Petition for Rulemaking, meet the technical requirement under the Commission's technical rules and regulations, as well as help demonstrate the public interest benefits in the proposed changes.

To summarize the proposed changes, LMB seeks to modify the operation of KRQU Laramie, Wyoming as following:

- 1) Change KRQU's city of license from Laramie, Wyoming to Ault, Colorado, as this communities first local transmission service.
- 2) Upgrade KRQU's class of service from a class C2 to a class C1
- 3) Re-locate KRQU's transmitter site to place the required 70 dbu city grade service over Ault, Colorado.
- 4) Change KRQU's authorized channel from 283C2 to channel 280C1. This is a third adjacent channel to KRQU's present operation, therefore should be considered as a "one step" channel change proposal. In order to make this change, substitution of the vacant and not yet applied for channel 280C2 at Cheyenne, Wyoming will be required. Channel 277C2 can be allotted to

Cheyenne, Wyoming as a substitution for channel 280C2, once channel 280 is allotted to Ault, Colorado, as proposed in this petition.

- 5) Re-allot channel 283C2 to Laramie, Wyoming with a site restriction which allows for the use of channel 280C1 at Ault, Colorado, thus maintaining this communities 5<sup>th</sup> FM channel allotment

A more detailed discussion of the proposed changes will now be outlined.

LMB proposes to modify the operation of KRQU Laramie, WY to specify a new city of license LMB proposes to change the city of license for KRQU from Laramie, Wyoming to Ault, Colorado. LMB desires to make this change since it will provide the first local transmission facility for Ault, Colorado. It will also allow for the upgrade of its class of operation from a class C2 to a class C1. This will dramatically increase the both the square kilometer coverage of KRQU from its present 7,831 square kilometers to 16,656 square kilometers, or a gain of 8,825 square kilometers within the stations 60 dbu primary service area. It will also increase the population within the 60 dbu service area from the present 33,619 persons to 604,178 persons, or a gain of 570,559 persons.

Ault, Colorado is presently without any broadcasting services. There are no AM, FM or TV stations authorized to operate at Ault. Ault is an independent growing community located in northern Colorado. Ault has a population of 1,432 persons according to the 2000 U.S. Census. This is an increase of 325 persons from the 1990 census population of 1107 persons. Ault is an incorporated community with a town hall, post office, school, churches, many retail stores, industry and its own zip code.

Figure 1 of this statement, shows a channel spacing study for a proposed allotment point for channel 280C1 at Ault, Colorado. It is located at the coordinates of 40 – 45 – 00 N, 105 – 09 – 12 W. This point is located 40.24 kilometers northwest of the community of Ault, thus a site restriction of 40.3 kilometers will be required to allot channel 280C1 to Ault. This distance is within the normal 50.0 kilometers required for a class C1 allotment to provide city grade 70 dbu service to the community of license.

The channel study shows that the allotment point for channel 280C1 at Ault, meets all of the spacing requirements under 73.207, with the exceptions of: 1) The vacant allotment of Channel 280C2 at Cheyenne, Wyoming. 2) A proposal to upgrade the allotment of channel 280C2 at Cheyenne to channel 280C1 at Cheyenne. 3) The licensed operation of KOZY Gering, Nebraska. 4) The licensed operation of KRQU Laramie, Wyoming on channel 283C2.

All of these short spacing issues can be resolved as follows as referenced by number 1) in regards to the vacant and not yet applied for channel 280C2 at Cheyenne, Wyoming, this channel can be substituted with channel 277C2 at Cheyenne. Figure 2 shows a channel spacing study for channel 277C2 at the coordinates of 41 – 22 – 59 N, 104 – 40 – 06, W. This proposed allotment point is located 30.38 kilometers northeast of the city of Cheyenne. A site restriction of 30.4 kilometers northeast will be required to substitute channel 277C2 for channel 280C2 at Cheyenne. This spacing is within the normal 32 kilometers required to allot a class C2 channel to a community and provide the required 70 dbu city grade coverage to the community of license.

The spacing study for channel 277C2 at Cheyenne shows that it will meet all of the spacing requirements of 73.207 of the Commissions rules, with the exceptions of the

vacant allotment at Cheyenne on channel 280C2 and the licensed operation of KARS-FM Laramie on channel 275C. In regards to the vacant allotment at Cheyenne, this channel is being substituted by 277C2 at Cheyenne and proposed to be allotted as channel 280C1 at Ault, Colorado. The proposed allotment point for channel 277C2 at Cheyenne and the proposed allotment point of channel 280C1 at Ault, Colorado, are separated by 81.27 kilometers. The normal spacing requirement for a third adjacent class C2 channel and a class C1 channel is 79 kilometers.

In regards to the short spacing towards the licensed facilities of KARS-FM Laramie, KARS-FM has received a construction permit to change its transmitting site and downgrade to a class C1. As can be seen in Figure 2, KARS-FM's CP site is fully spaced to the proposed channel 277C2 at Cheyenne. It should be noted that KARS-FM is presently reported silent by the Commission and it has removed its equipment from its licensed tower site, which is owned by LMB and is also the current tower site for KRQU Laramie. KARS-FM has also cancelled its lease for tower spaced with LMB. New construction of the new class C1 operation of KARS-FM has been started and expected to be completed late this spring of 2004. KARS-FM has agreed to downgrade to a class C1 in another rulemaking proceeding, to allow the relocation of KTRR Loveland, Colorado, which in turn allows for the new operation of KAGM at Greenwood Village, Colorado. KARS-FM was also not operating with minimum class C power required to maintain full class C status (100KW ERP at 372 meters HAAAT). Thus, if KARS-FM would not already be downgrading by its own choice, LMB would ask the Commission to issue a show cause order to downgrade KARS-FM to a class C0 to help fulfill this proposal.

2) in regards to the proposal to upgrade the allotment at Cheyenne from channel 280C2 to channel 280C1, this petition was filed by Mountain States Radio, Inc. ("MSR") licensee of KRRR(FM) Cheyenne, Wyoming. MSR is under common ownership with LMB. The commission has originally denied this Petition filed by MSR. MSR has filed for reconsideration in this ruling, however, will simultaneously file a withdrawal of that reconsideration petition, with the filing of this petition. The original Petition filed by MSR called for the re-licensing of KRRR (Formerly KZCY) from channel 285A to channel 280C1 at Cheyenne and the substitution of channel 285C2 for channel 280C2 at Cheyenne. Thus, only the present vacant and not yet applied for channel 280C2 exists at Cheyenne.

3) in regards to the short spacing indicated towards KOZY-FM Gering, Nebraska, channel 280C3, on the figure 1 channel spacing study for channel 280C1 at Ault. KOZY (formerly KOLT-FM) has been ordered to change channels from channel 280C3 to channel 239C3 in MM Docket No. 97-106, RM-9044 and RM-9741. This docket provided for the new allotment of channel 280C2 to Cheyenne, Wyoming. Thus, KOZY will be required to change channels from 280C3 to channel 239C3. As to the reimbursement of Tracy Broadcasting Corporation ("Tracy"), licensee of KOZY Gering, LMB would be willing to reimburse Tracy for legitimate and prudent expenses in regards to the frequency change required by the allotment of channel 280C1 to Ault, Colorado, if the commission determines that LMB is responsible for such reimbursement, or if such responsibility is that of the original petitioner for the Cheyenne allotment, TSBII, Inc..

Figure 3 is a copy of the Report and Order issued by the Commission, which required KOZY (formerly KOLT-FM) Gering, Nebraska to change channels.

4) in regards to the short spacing towards KRQU Laramie, Wyoming operating on channel 283C2. this is the station that LMB proposes to re-license from Laramie, Wyoming to Ault, Colorado and one step upgrade on its third adjacent, channel 280C1. It should be noted, that the operation of KRQU on channel 283C2 does preclude the new allotment of channel 280C1 to Ault, Colorado as it first local aural service. A search of the entire commercial FM spectrum, also concluded that no other FM channels are available for use at Ault, Colorado. Thus, a denial of the LMB Petition, would deny first local service to Ault.

As documented by the above discussion, channel 280C1 can be allotted to Ault, Colorado, and the operation of KRQU Laramie, can be modified from channel 283C2 to channel 280C1 and meet all of the rules for spacing towards other stations under 73.207. Also, channel 277C2 can be substituted for the vacant channel 280C2 at Cheyenne, Wyoming, to allow for the use of channel 280C1 at Ault, Colorado by KRQU.

LMB has also studied the gain/loss effects of the proposed modification of the operation of KRQU from Laramie, Wyoming to Ault, Colorado. As previously mentioned, the 60 dbu service area of KRQU would be greatly increased. A population increase of 570,559 persons would be realized. A square kilometer coverage increase of 8,825 square kilometers would also be gained.

Figure 4 shows the present and proposed predicted coverage contours of KRQU. While over one third of the 60 dbu service will be duplicated by the new operation of KRQU, some primary service loss area will be created. This proposed loss area will continued to be well served by other AM, FM, and TV stations. Figure 5 shows other FM stations in the area that service the present 60 dbu service area of KRQU. This

service area is also covered by the 5 coverage contours of KHAT(AM) Laramie, Wyoming operating on 1210 Khz and KOWB Laramie, operating on 1290 Khz. Thus, it was determined that no less than 5 primary services contours will remain in the proposed loss area of KRQU.

Laramie currently has 5 commercial FM allotments and 2 fulltime AM stations licensed. LMB also proposes to re-allot channel 283C2 to Laramie, Wyoming, to maintain its 5<sup>th</sup> commercial FM allotment. With the proposed allotment of channel 280C1 to Ault, Colorado, a site restriction of 12 kilometers northwest of Laramie will be required to maintain the allotment of channel 283C2 to Laramie, Wyoming. Figure 6 shows a channel spacing study for channel 283C2 at a proposed allotment point for channel 283C2 at Laramie. It is located at 41 – 23 – 00 N. 105 – 41 – 48 W. This point northwest of Laramie will be required to allot channel 280C1 to Ault, Colorado. This point is separated by the proposed allotment point for channel 280C1 at Ault by 83.9 kilometers. 79 kilometers is the required spacing under 73.207 of the commissions rules for a third adjacent channel class C2 to class C1 allotment.

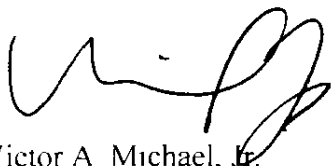
This re-allotment of channel 283C2 at Laramie, will ultimately preserve service to Laramie and its surrounding communities. LMB certifies its intent to apply to operate a new station on channel 283C2 at Laramie or to participate in any auction proceeding, if the commission re-allots channel 283C2 to Laramie, Wyoming.

The following is a summary of the proposed changes to the FM table of allotments, 73.202(b)(1).

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cheyenne, Wyoming	229A, 250C1, 260C2, 264C1 280C2, 285C2, 292A	229A, 250C1, 260C2, 264C1 277C2, 285C2, 292A
Laramie, Wyoming	236C, 244C2, 254A, 275C 283C2	236C, 244C2, 254A, 275C1 283C2
Ault, Colorado	-----	280C1

LMB certifies that if Petition for Rulemaking is granted, it will promptly apply to specify a new transmitter site for the modified operation of KRQU to serve Ault, Colorado. will reimburse Tracy for the modification of KOZY Gering, Nebraska, if required, and apply to operate a new FM station at Laramie if allotted

Respectfully Submitted,



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January 25, 2004

Figure 1, Proposed Allotment Point, KRQU  
AULT, COLORADO, Channel 280C1

REFERENCE

40 45 00 N  
105 09 12 W

CLASS = C1

Current Spacings

DISPLAY DATES

DATA 01-24-04

SEARCH 01-25-04

----- Channel 280 - 103.9 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
RADD	ADD 280C1	Cheyenne	WY 61.50	53.6	245.0	-183.50
RDEL	DEL 280C2	Cheyenne	WY 52.08	33.9	224.0	-171.92
ALLO	VAC 280C2	Cheyenne	WY 52.08	33.9	224.0	-171.92
RADD	ADD 280C1	Cheyenne	WY 93.70	36.2	245.0	-151.30
KOZYFM	LIC 280C3	Gering	NE 173.22	43.8	211.0	-37.78
KRQU	LIC 283C2	Laramie	WY 67.20	338.1	79.0	-11.80
KRQU.C	CP -N 283C2	Laramie	WY 72.79	341.7	79.0	-6.21
KYZX	LIC-N 280C2	Pueblo West	CO 224.07	173.5	224.0	0.07
KRFX.A	APP-D 278C	Denver	CO 113.14	183.6	105.0	8.14
KRFX.A	APP-D 278C	Denver	CO 113.14	183.6	105.0	8.14
RDEL	DEL 278C	Denver	CO 113.41	183.5	105.0	8.41
KRFX	LIC 278C	Denver	CO 113.41	183.5	105.0	8.41
RADD	ADD 279C0	Akron	CO 205.03	108.0	196.0	9.03
KFMUFM	LIC-N 281C3	Oak Creek	CO 156.72	249.1	144.0	12.72
RADD	ADD 278C0	Denver	CO 113.41	183.5	94.0	19.41
RADD	ADD 279C1	Akron	CO 201.46	111.8	177.0	24.46
KSNOFM	LIC 280A	Snowmass Village	CO 224.94	222.6	200.0	24.94
KQLT	LIC 279C	Casper	WY 241.38	337.0	209.0	32.38
KTCL	LIC-Z 227C	Fort Collins	CO 75.67	163.5	41.0	34.67
RDEL	DEL 227C	Fort Collins	CO 75.67	163.5	41.0	34.67
KUCD	LIC-N 282C1	Longmont	CO 117.06	180.5	82.0	35.06
ALLC	VAC 281A	Guernsey	WY 171.86	11.3	133.0	38.86

Figure 2, Proposed Allotment Point  
Cheyenne, Wyoming, Channel 277C2

REFERENCE

41 22 59 N

104 40 06 W

CLASS = C2

Current Spacings

DISPLAY DATES

DATA 01-24-04

SEARCH 01-25-04

----- Channel 277 - 103.3 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
RADD	ADD 280C1	Cheyenne	WY 15.78	71.5	79.0	-63.22
RADD	ADD 280C1	Cheyenne	WY 35.17	165.6	79.0	-43.83
KARSFM	LIC 275C	Laramie	WY 66.19	263.3	105.0	-38.81
RDEL	DEL 280C2	Cheyenne	WY 29.56	203.0	58.0	-28.44
AILC	VAC 280C2	Cheyenne	WY 29.56	203.0	58.0	-28.44
AILC	VAC 277A	Hanna	WY 167.13	289.5	166.0	1.13
KRFX.A	APP-D 278C	Denver	CO 189.43	194.8	188.0	1.43
KRFX.A	APP-D 278C	Denver	CO 189.43	194.8	188.0	1.43
KRFX	LIC 278C	Denver	CO 189.68	194.8	188.0	1.68
RDEL	DEL 278C	Denver	CO 189.68	194.8	188.0	1.68
RADD	ADD 278C0	Denver	CO 189.68	194.8	176.0	13.68
RADD	ADD 275C1	Laramie	WY 102.58	238.6	79.0	23.58
KARSFM	CP 275C1	Laramie	WY 102.95	237.1	79.0	23.95
ALLO	RSV 276C	Parker	CO 222.84	165.9	188.0	34.84
KAVD.A	APP 276C	Parker	CO 223.46	165.0	188.0	35.46
KAVD.A	APP 276C	Parker	CO 223.46	165.0	188.0	35.46
KCZYFM	LIC 280C3	Gering	NE 96.38	55.9	56.0	40.38
KAVE	LIC-N 276C1	Limon	CO 229.74	157.4	158.0	71.74

# FIGURE 3

Federal Communications Commission

DA 00-865

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b). ) MM Docket No. 97-106  
Table of Allotments, ) RM-9044  
FM Broadcast Stations. ) RM-9741  
(Cheyenne, Wyoming and )  
Gering, Nebraska)<sup>1</sup> )

## REPORT AND ORDER

Adopted April 13, 2000

Released: April 14, 2000

By the Chief, Allocations Branch.

1. The Allocations Branch has before it the Notice of Proposed Rule Making and an Order to Show Cause issued in response to a request filed by TSBII, Inc. ("TSBII"), 12 FCC Rcd 3690 (1997). In response to the Notice, Tracy Broadcasting Corporation ("Tracy"), licensee of Station KOLT-FM, Gering, NE, and permittee of Stations KASX(FM), Pine Bluffs, NE, and KAWQ(FM), Bridgeport, NE, filed an Answer to Order to Show Cause and a Counterproposal. TSBII and Montgomery Broadcasting Limited Liability Company ("Montgomery") filed comments. TSBII, Tracy and Montgomery filed reply comments.

### Background/Comments

2 The Notice proposed the allotment of Channel 280C2 at Cheyenne, Wyoming, as the community's sixth local commercial FM transmission service. The Notice also proposed the substitution of Channel 239C3 for Channel 280C3 at Gering, Nebraska, and the modification of Station KOLT-FM's license accordingly to accommodate the allotment. Tracy filed a counterproposal proposing to: 1) substitute Channel 267C1 for Channel 280C3 at Gering, Nebraska and to modify Station KOLT-FM's license; 2) substitute Channel 280C1 for Channel 287C2 at Pine Bluffs, Nebraska and to modify the construction permit for Station KASX-FM<sup>2</sup>; and 3) substitute Channel 239C3 for Channel 267C at Bridgeport, Nebraska, and to modify the construction permit for Station KAWQ(FM).<sup>3</sup> Tracy urges the Commission to deny TSBII's

<sup>1</sup> Tracy is also the licensee of Stations KMOR-FM and KOLT(AM), Scottsbluff, NE, KOAQ(AM), Terrytown, NE, and KBFZ(FM), Kimball, NE, which are not involved in this proceeding.

<sup>2</sup> According to Tracy, the upgraded channel will allow the Pine Bluffs station to use a Tracy owned transmitter site located near Albin, Wyoming.

<sup>3</sup> Public Notice of the counterproposal was given on October 14, 1999, Report No. 2364.

proposal because it claims that the addition of Channel 280C2 to Cheyenne, WY will add a sixth local commercial FM station which is a lesser priority than its proposal which would provide both a first and second full-time reception service under Priorities 1 and 2.<sup>4</sup> Tracy further contends that the enormous costs associated with modifying Station KOLT-FM to operate on Channel 239C3 also warrant rejection of the TSBII proposal. TSBII has not disputed Tracy's engineering claims. However, while TSBII agrees to reimburse Tracy, it believes that Tracy's estimate of \$100,000 is excessive. Although Tracy wants the Commission to require TSBII to pay for its expenses in advance, TSBII states that it is confident that the parties can negotiate the reimbursement of the reasonable expenses. Lastly, Montgomery opposed TSBII's proposal on the grounds that it could have an adverse impact on programming and advertising in the Cheyenne, Wyoming market area.

### Discussion

3. As a threshold matter, there are no alternate channels available to resolve the conflict between TSBII's and Tracy's rulemaking proposals.<sup>5</sup> Consequently, we must compare these proposals using the FM Allotment priorities. Based on the information before us, we believe that the public interest would be better served by adopting TSBII's request to allot Channel 280C2 to Cheyenne, Wyoming for the reasons that follow.<sup>6</sup>

4. To begin with, Tracy argued that its counterproposal should be preferred because the substitution of Channel 280C1 for Channel 287C2 at Pine Bluffs will provide a first full-time aural service to 300 people in a 186 square kilometer area, thus satisfying Priority 1, and that 2,017 people in a 1,555 square kilometer area will receive a second full-time aural service thus satisfying Priority 2. Tracy claims that since its counterproposal will create a 40% net service gain for the Pine Bluffs station, will maintain the existing coverage of the Gering and Bridgeport stations and will provide a first and second full time aural service, its counterproposal serves the Commission's most important priorities.<sup>7</sup> However, our technical review indicates that Tracy's engineering analysis is flawed. Our analysis reveals that the proposed upgrade and change of transmitter site for the Pine Bluffs station will create a gain area containing 83,763 persons and a loss area of 930 persons, resulting in a net gain of 82,833 persons. Our study further shows that there will be no first full-time aural reception service provided to any of the 83,763 persons within the gain area. While there is currently no FM service coverage to the area in which Tracy is claiming a first aural service priority, the 5 mV/m ground wave contour of clear channel AM Station KOA provides coverage,

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<sup>4</sup> The FM allotment priorities are (1) First full-time aural service, (2) Second full-time aural service, (3) First local service; and (4) Other public interest matters [Co-equal weight given to priorities (2) and (3) ]

<sup>5</sup> These proposals are mutually exclusive because Tracy's proposal to substitute Channel 280C1 at Pine Bluffs is short-spaced by approximately 150 kilometers to TSBII's proposal to allot Channel 280C2 at Cheyenne under the Commission's minimum distance separation rules. The required spacing between these two channels is 224 kilometers while the actual spacing is 73.6 kilometers.

<sup>6</sup> Currently there are 3 NCEFM, 5 commercial licensed FM stations and 3 AM stations at Cheyenne, WY.

<sup>7</sup> We note that Tracy's Pine Bluffs and Bridgeport stations are unbuilt.

thus disputing Tracy's claim that its counterproposal will provide a first aural service to Pine Bluffs. Similarly, Tracy's Pine Bluff upgrade will provide a second full time aural service to 638 people rather than the 2,017 people represented by Tracy under Priority 2. In addition, our technical review reduces this second full time aural service to 632 people because six persons within the loss area will lose a second full-time reception service, thus creating a "gray" area.<sup>8</sup> Consequently, the Pine Bluffs upgrade would at best trigger Priority 2 because it could provide a second full-time reception service to 632 people. The Pine Bluffs upgrade would also provide 867 people with a third aural service, 602 people with a fourth aural service, and 293 people with a fifth aural service, thereby providing 1,762 underserved people within the gain area with additional service under Priority 4.

5 However, balanced against these public interest benefits are the public interest detriments of the Bridgeport station's proposed downgrade from a Class C to C3. While we recognize that the Bridgeport station is unbuilt, under its current construction permit, the station could provide coverage to 24,460 persons within its 60 dBu contour. Changing from the Bridgeport construction permit site and decreasing the class from C to C3, the station will provide service to 8,338 persons within its 60 dBu contour, resulting in a service loss to 17,965 people and a gain of service to 1,843 persons. The net service loss from this downgrade is 16,122 people. Most significantly, downgrading the channel results in 211 people losing a potential first aural service that has already been authorized, thus creating a "white area" and triggering Priority 1. We believe that the creation of this "white area" under Priority 1 outweighs the benefits of the second full-time reception service that the Pine Bluffs upgrade could provide to 632 people because it triggers the highest allotment priority – that is, the retention of a first full-time reception service. Indeed, we have in the past denied proposals that would have triggered important allotment priorities such as a first local transmission service under Priority 3 because retaining the current arrangement of allotments would eliminate "white" areas and enable people to retain their only authorized aural reception service.<sup>9</sup> In addition, 51 people would lose an authorized but unbuilt second full-time aural service by the Bridgeport downgrade, thereby creating a "gray" area. On a cumulative basis, this would further reduce number of people that the counterproposal would provide a second full-time reception service from 632 to 581. In addition, the Bridgeport downgrade would also result in 14,776 other "underserved" people losing 3<sup>rd</sup> through 5<sup>th</sup> full-time reception services.<sup>10</sup> By way of contrast, all 1,843 people in the gain area for Bridgeport are well served with five or more aural services.

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<sup>8</sup> A "gray area" is an area in which there is only one full-time aural reception service, a "white area" is an area in which there are no full-time aural reception services.

<sup>9</sup> See, e.g., Littlefield, Wolfforth, and Tahoka, TX, 12 FCC Rcd 3215 (Allocations Branch 1997) (proposed change of community of license that would provide a first local transmission service in its current community of license the station could eliminate a white area, providing a first full-time reception service to 411 people).

<sup>10</sup> Specifically, 4,829 people would go from three to two services, 1,843 people would go from four to three services, and 8,104 persons would go from five to four services.

6 As for the Gering upgrade, Tracy proposes to upgrade from Channel 280C3 to Channel 267C1 and change the site from which coverage can be provided to 59,109 people. These changes at Gering result in 19,550 people receiving additional coverage, with no loss areas. However, all of the people in the gain area are well served with five or more full-time reception services.

7 We believe that, on balance, the new Cheyenne allotment should be preferred over Tracy's counterproposal.<sup>11</sup> Generally, we prefer a new allotment over an upgrade to existing service because the new allotment constitutes a new primary service to a community while the upgrade provides an expanded or enhanced secondary service. See Andalusia, AL, 49 Fed Reg 32201 (August 13, 1984) See also Benton, Arkansas, 7 FCC Rcd 2555 (Policy and Rules Div. 1992) While Tracy has tried to rebut this presumption and to argue that its counterproposal should be preferred because it would provide second full-time reception service under Priority 2, we have found that this benefit is outweighed by the creation of white area to 211 people.<sup>12</sup> Under these circumstances, providing a 12<sup>th</sup> local transmission service to Cheyenne<sup>13</sup> is preferable to granting the counterproposal. Our view is further buttressed by the fact that the Bridgeport downgrade will also result in 51 people losing a second full-time reception service, thus creating a gray area and will cause 14,776 other underserved persons to lose 3<sup>rd</sup> through 5<sup>th</sup> aural reception services.

8. Regarding the reimbursement and economic impact issues, we decline to require TSBII to pay the expenses in advance for the frequency change because no showing has been made as to TSBII's inability to reimburse Tracy. Absent a factual basis for questioning a party's financial ability to reimburse, we will leave matters such as the time and manner of reimbursement to the good faith negotiations of the parties. See Columbus, NE, 59 RR 2d 1185 (1989) and Dickson, TN, 4 FCC Rcd 8707 (1989). Furthermore, what constitutes legitimate and prudent expenses for reimbursement is also left to the good faith negotiation of the parties subject to Commission review if the parties are unable to reach agreement. See, e.g., Mayfield and Wickliffe, KY, 48 RR 2d 1232, 1235. Montgomery's argument that the proposed channel substitutions would adversely impact on programming and market area advertisers raises issues which the Commission has already determined are not relevant in either a licensing or allotment context. See Policies Regarding Detrimental Effects

<sup>11</sup> The reference coordinates for a Channel 280C2 allotment at Cheyenne, Wyoming are 41-08-17 North Latitude and 104-48-22 West Longitude with a site restriction of 1.3 kilometers (.64 miles) northeast. The reference coordinates for Channel 239C3 at Gering, Nebraska are 41-51-50 North Latitude and 103-42-20 West Longitude.

<sup>12</sup> We recognize that in Seabrook and Huntsville, TX, 10 FCC Rcd 9360 (Commission 1995), the Commission held that a second aural service to 455 persons was de minimis and did not trigger priority (2) in view of a differential of 144,000 persons between the net gain in population of two competing upgrades. However, we believe that Seabrook is distinguishable from the instant case because we are dealing with a higher allotment priority, first full-time reception service. Further, in Seabrook, the Commission was comparing two mutually exclusive upgrades, one of which would provide a second full-time reception service as a positive public interest benefit. That case did not involve a proposal that would result in a loss of authorized first or second full-time reception services to individuals as the instant case does.

<sup>13</sup> Cheyenne currently has 3 noncommercial educational FM stations, 5 commercial FM stations, and 3 AM stations. In addition, in MM Docket 96-242, there is a pending proposal to allot Channel 229A to Cheyenne that could result in an additional allotment to that community. The sole counterproposal in that proceeding was recently withdrawn.

of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989); Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993). Consequently, there is no basis under the current state of Commission precedent for consideration of those issues

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 30, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED to read as follows.

<u>City</u>	<u>Channel No.</u>
Cheyenne, Wyoming	280C2, 250C1, 260A,, 264C1, 285A, 292C3
Gering, Nebraska	239C3

10. A filing window for Channel 280C2 at Cheyenne, Wyoming will not be opened at this time. Instead, the issue of opening a filing window for this channel will addressed by the Commission in a subsequent order.

11 IT IS FURTHER ORDERED, That pursuant Section 316(a) of the Communications Act of 1934, as amended, the license of Tracy Broadcasting Corporation, for Station KOLT-FM, Channel 280C3, Gering, Nebraska, IS MODIFIED to specify operation on Channel 239C3 at Gering, Nebraska, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in license BLH-19960807KE except for the community as specified above. Any changes, except those specified, require prior authorization pursuant to an application for construction permit. (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-19960807KE except for the community as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

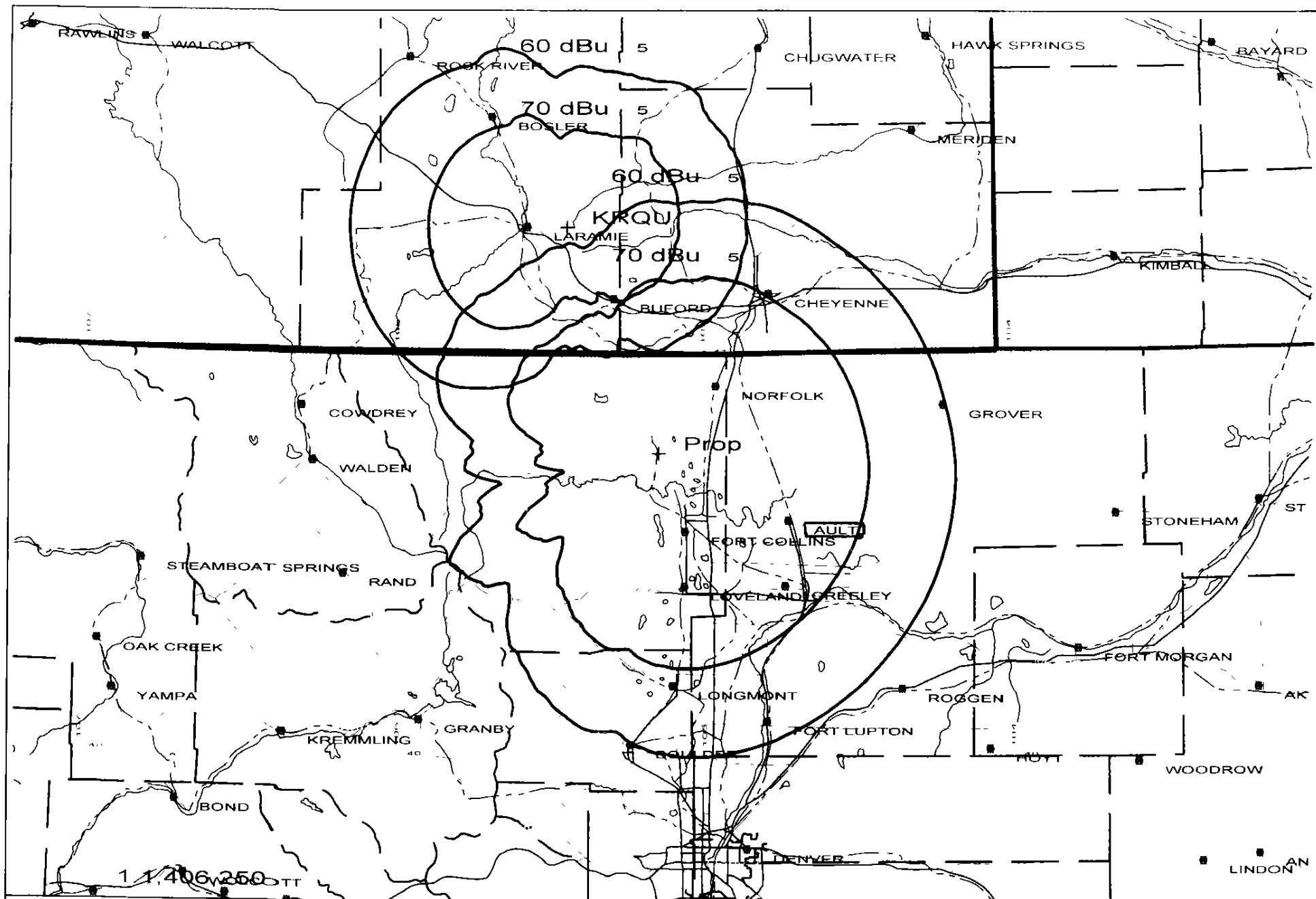
12 IT IS FURTHER ORDERED, That the counterproposal filed by Tracy Broadcasting Corporation for Channel 267C1 at Gering, Channel 280C1 at Pine Bluffs, and Channel 267C at Bridgeport, Nebraska IS DENIED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED

14. For further information concerning this proceeding, contact Arthur D. Scrutchins or Darrell Baugess at (202) 418-2180 or Andrew J. Rhodes at (202) 418-2120.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau



Scale in km  
 0 10 20 30 40 50 60 70 80 90

Prop 280C1 100kW 2048M AMSL  
 N Lat. 40 45 00 W Lng 105 09 12

Ault, CO 280C1 & KRQU LARAME  
 - 01/04 FIGURE 4



Figure 6, Proposed Allotment Point  
Laramie, Wyoming, Channel 283C2

REFERENCE				DISPLAY DATES			
41 23 00 N				CLASS = C2			
105 41 48 W				Current Spacings			
----- Channel 283 - 104.5 MHz -----				DATA 01-24-04			
				SEARCH 01-25-04			
Call	Channel	Location	Dist	Azi	FCC	Margin	
KRQU	LIC 283C2	Laramie	WY 21.90	111.6	190.0	-168.10	
KRQU.C	CP -N 283C2	Laramie	WY 22.53	93.2	190.0	-167.47	
KTRSEFM	LIC 284C1	Casper	WY 159.32	341.8	158.0	1.32	
ALLO	VAC 280C2	Cheyenne	WY 79.45	109.8	58.0	21.45	
RDEL	DEL 280C2	Cheyenne	WY 79.45	109.8	58.0	21.45	
RADD	ADD 280C1	Cheyenne	WY 100.93	109.4	79.0	21.93	
RADD	ADD 280C1	Cheyenne	WY 101.09	86.8	79.0	22.09	
RADD	ADD 285C2	Cheyenne	WY 80.45	99.7	58.0	22.45	
KFRS	LIC 285A	Cheyenne	WY 78.97	111.2	55.0	23.97	
RDEL	DEL 285A	Cheyenne	WY 78.97	111.2	55.0	23.97	
RADD	ADD 282C	Wamsutter	WY 215.77	281.3	188.0	27.77	
KRRR.C	CP -N 285C2	Cheyenne	WY 88.60	107.9	58.0	30.60	
ALLO	VAC 230A	Rock River	WY 45.85	330.0	15.0	30.85	
KJCL	LIC-N 282C1	Longmont	CO 192.72	166.4	158.0	34.72	
RDEL	DEL 283C	Rock Springs	WY 286.07	272.2	249.0	37.07	
KSIT	LIC 283C	Rock Springs	WY 286.07	272.2	249.0	37.07	
RDEL	DEL 283C	Rock Springs	WY 286.07	272.2	249.0	37.07	
KSKEFM	LIC 284C1	Vail	CO 204.30	198.3	158.0	46.30	
RADD	ADD 229A	Cheyenne	WY 81.71	103.3	15.0	66.71	
ALLO	VAC 281A	Guernsey	WY 126.00	38.4	55.0	71.00	